

the party. The Contracting Officer shall reduce his final decision to writing and furnish the party a copy, by certified mail—return receipt requested, which decision shall be final and conclusive and shall bind the party unless within 30 days of receipt of the decision the party appeals from said decision by personal delivery or by certified mail to the Maritime Administrator with notice to the Contracting Officer.

(e) *Appeals to the Maritime Administrator.* Appeals with a request for a hearing on the record, if desired, are to be transmitted pursuant to paragraph (d) of this section and are to be addressed to the Maritime Administrator. Upon the filing of an appeal, the Contracting Officer shall transmit the entire record and a copy of his final decision to the Maritime Administrator. If a request for a hearing on the record is granted, the Maritime Administrator shall proceed pursuant to the Rules of Practice and Procedure in Part 201 of this title. The decision of the Maritime Administrator on any question of fact shall be final, conclusive and binding upon the party unless determined by a court of competent jurisdiction to be fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence.

§ 390.14 Departmental reports and certification.

(a) *In general.* For each calendar year, the Secretary of Transportation shall provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds under the Secretary of Transportation's jurisdiction.

(b) *Content of reports.* Each report shall set forth the name and taxpayer identification number of each person:

- (1) Establishing a capital construction fund during such calendar year;
- (2) Maintaining a capital construction fund as of the last day of such calendar year;
- (3) Terminating a capital construction fund during such calendar year;
- (4) Making any withdrawal from or deposit into (and the amounts thereof)

a capital construction fund during such calendar year; or

(5) With respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

[55 FR 34929, Aug. 27, 1990]

APPENDIX I TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—APPLICATION INSTRUCTIONS

INSTRUCTION REGARDING APPLICATION FOR A CAPITAL CONSTRUCTION FUND

An application for a capital construction fund under section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177), the Rules and Regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation (26 CFR Part 3 and reprinted in 46 CFR Part 391, the "Joint Regulations") and individually by the Secretary of Transportation (46 CFR Part 390, the "SOC Regulations") shall be prepared and submitted in the form specified by these instructions.

The application must be legible and shall be submitted in six (6) complete sets, including the required Schedules and Exhibits. The application shall be filed with the Secretary, Maritime Administration, Washington, DC 20590. Three of these sets must be duly executed and certified by the Applicant. The name of the Applicant shall be shown on all accompanying papers for identification.

All questions contained in the application must be responded to; if a question is not applicable the respondent should so state. Additional information may be requested if such information is necessary to aid the Contracting Officer in making a determination to enter into a Capital Construction Fund Agreement.

U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION

APPLICATION FOR ESTABLISHMENT OF A CAPITAL CONSTRUCTION FUND UNDER SECTION 607, MERCHANT MARINE ACT, 1936, AS AMENDED

The undersigned _____ ("Applicant"), a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended, hereby applies under section 607 of the Merchant Marine Act, 1936, as amended ("Act"), the Rules and Regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Transportation ("Joint Regulations") and individually by the Secretary of Transportation

("SOC Regulations") to establish a Capital Construction Fund to aid in the acquisition, construction or reconstruction of a qualified vessel, the acquisition, construction or reconstruction of barges, containers or trailers which are part of the complement of a qualified vessel and the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge, container or trailer which is part of the complement of a qualified vessel. The fund hereby applied for will be effective for deposits relating to the taxable year beginning _____, 19__ and ending _____, 19__, and for subsequent taxable years. In support of this application, the Applicant submits the following information:

I. *As to the identity of and other General Information of the Applicant* (the following data is required to prove the Applicant's citizenship to the satisfaction of the Secretary; also see 46 CFR Part 355):

A. *Natural Persons.* If the Applicant is a natural person, the following identifying information should be submitted:

1. Name.
2. Address.
3. Date of birth.
4. Place of birth.
5. Citizenship.
6. Principal place of business.
7. Trade name under which business is conducted.

B. *Partnerships, Associations, Unincorporated Companies.* If the Applicant is a partnership, association, or unincorporated company, the following identifying information should be submitted:

1. Name of partnership, association, or unincorporated company.
2. Business address.
3. Date and place of organization.
4. Name of all partners (general, limited and special) of the partnership or trustees and holders of beneficial interests in the association or company.
5. Share owned by each partner, trustee, or beneficial owner.
6. Date of birth of each.
7. Place of birth of each.
8. Citizenship of each.

C. *Incorporated Companies.* If the Applicant is an incorporated company, the following identifying information should be submitted:

1. Exact name of Applicant.
2. State in which incorporated and date of incorporation.
3. Address of principal executive offices, and of important branch offices, if any.
4. The following information with respect to each officer and director of the corporation:
 - a. Name and address.
 - b. Office.
 - c. Citizenship.

d. Capital shares owned (specify type, whether voting or non-voting and percentage of total of each type issued if five percent (5%) or more).

5. The name, address and citizenship of and number of capital shares owned by each person not named in answer to item 4, owning of record, or beneficially if known, five percent (5%) or more of the issued capital shares of any class stock of the Applicant.

6. A brief statement of the general effect of each voting agreement, voting trust, or other arrangement whereby the voting rights in any shares of the Applicant are owned, controlled, or exercised, or whereby the control of the Applicant is in any way held or exercised by any person not the holder of legal title to such shares. (Give the name, address, citizenship, and business of any such person, and, if not an individual, include the form of organization.)

II. *As to the Business and Affiliations of the Applicant.* A. A brief description of the principal business activities during the past five years of the Applicant and of any predecessor or predecessors of the Applicant; if any change is presently contemplated, a brief statement of the nature and circumstances thereof.

B. A list of all companies or persons that are related within the meaning of section 482 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder ("related companies") or that directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with the Applicant, together with an indication of the nature of the business transacted by each, the relationships between the companies named, and the nature and extent of the control. This information may be furnished in the form of a chart.

C. A statement whether during the past 5 years the Applicant or any predecessor or related company has been in bankruptcy or in reorganization under II-B of the Bankruptcy Act or in any other insolvency or reorganization proceedings, and whether any substantial property of the Applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

D. A statement of whether the Applicant or any predecessor or related company is now or during the past 5 years was involved in any litigation or subject to any outstanding judgments. If so, give details.

E. Describe any contemplated plan of reorganization or recapitalization involving new capital, the consolidation or mergers of the Applicant with related or other companies, debt elimination, or other changes or modifications in the corporate or individual structure, and indicate by appropriate financial statements the anticipated results thereof.

III. *As to the Management of the Applicant.*

A. A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the Applicant.

B. The name and address of each other organization engaged in business activities related to those carried on or to be carried on by the Applicant with which any person named in the answer to the preceding item has any present business connection; the name of each such person, and briefly the nature of such connection.

IV. *Description of Vessels, Barges, Containers or Trailers which Applicant Proposes to be Incorporated in Capital Construction Fund Agreement for the Purpose of Making Deposits.* Vessels must be eligible vessels as that term is defined in section 607(k) of the Act and §390.5(b) of the SOC Regulations. Undocumented barges, containers or trailers must be part of the complement of an eligible vessel as that term is defined in section 607(b) of the Act and §390.5(d) of the SOC Regulations:

A. *Vessels.* Provide in a tabular form headed "Schedule A" (see prescribed format in appendix II) the vessels owned or leased by the Applicant which the Applicant proposes to be designated as "Eligible Agreement Vessels" for the purposes of making deposits into a Capital Construction Fund pursuant to the provisions of section 607 of the Act, giving:

- a. Name and official number.
- b. Specific type.
- c. Capacity (tons of cargo, number of containers, barges, etc.).
- d. Whether owned or leased, and if leased the owner and the owner's address.
- e. Date and place of construction.
- f. If reconstructed, date of redelivery and place of reconstruction.
- g. Date documented under laws of the United States.
- h. Area of operation.
- i. Full details concerning the service in which the Applicant operates or will operate each vessel; if the vessel is used for multiple purposes indicate the percentage of time in which the vessel is engaged in each service.

B. *Barges, Containers, and Trailers.* Provide in a tabular form headed "Schedule A" (see prescribed format in appendix II) the barges, containers, and trailers owned or leased by the Applicant which the Applicant proposes to be incorporated in an Agreement for purposes of making deposits into a Capital Construction Fund pursuant to the provisions of section 607 of the Act, giving:

- a. Number of barges, containers or trailers which are part of the complement of an eligible vessel; name and official number of barges which are not a part of the complement of an eligible vessel.
- b. Specific type.
- c. Size or capacity.

d. Whether owned or leased, and if leased the owner and the owner's address.

e. Date and place of construction.

f. If reconstructed, date of redelivery and place of reconstruction.

g. Date documented under the laws of the United States.

h. Area of operation.

i. The vessel or vessels for which the barges, containers and trailers are part of the complement; full details concerning the service in which the Applicant operates or will operate each barge which is not a part of a complement.

V. *Purposes for which Qualified Withdrawals are Proposed.* Applicant is advised that information furnished in response to sections A, B, C and D of this item is for the purpose of inducing the United States to enter into an agreement to establish a Capital Construction Fund pursuant to section 607 of the Act. In connection therewith attention is directed to section 607(f)(2) of the Act which states, "Under joint regulations, if the Secretary of Transportation determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal." Also see §390.13 of the SOC Regulations.

A. *Acquisition or Construction of Vessels.* Provide in form headed "Schedule B" (see prescribed format in appendix II) the proposed program for the acquisition or construction of vessels, giving:

- a. Number, type and commercial characteristics of vessels to be acquired or constructed.
- b. Whether vessels will be replacements or additions, and if replacements identify vessels to be replaced.
- c. Projected date of acquisition or award of construction contract.
- d. Projected date of commencing operations.
- e. Estimated total cost.
- f. Method by which estimated total cost of project was determined.
- g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
- h. Estimated amount of borrowings and the amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund, including anticipated terms of such financing.
- i. Intended area of operation.
- j. Full details concerning the use of the proposed vessel; if the vessel is to be used for multiple purposes indicate the approximate percentage of time in which the vessel will be engaged in each service.

B. *Acquisition or Construction of Barges, Containers and Trailers.* Provide in a form

headed "SCHEDULE B" (see prescribed format in appendix II) the proposed program for acquisition or construction of barges, containers and trailers giving:

- a. Number, type and size of barges, containers and trailers.
- b. Whether barges, containers and trailers will be replacements or additions, if replacements, identify barges, containers or trailers to be replaced.
- c. Projected date of acquisition or award of construction contract.
- d. Projected date of introduction into service.
- e. Estimated total cost.
- f. Method by which estimated total cost of project was determined.
- g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
- h. Estimated amount of borrowings and the amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund including anticipated terms of such financing.
- i. Identification of vessels for which the barges, containers and trailers will be part of the complement, and the vessel's area of operation. In the case of barges which are not a part of the complement of a vessel provide the barges' intended area of operation.
- j. Full details concerning the use of the proposed barge; if the barge is to be used for multiple purposes indicate the approximate percentage of time in which the barge will be engaged in each service.

C. *Reconstruction of Vessels.* Provide in a form headed "SCHEDULE B" (see prescribed format in appendix II) the proposed program for reconstruction of vessels, giving:

- a. Identification of vessels to be reconstructed.
- b. Nature and extent of proposed reconstruction.
- c. Projected date of award of reconstruction contract.
- d. Projected date of commencing operations with reconstructed vessels.
- e. Estimated total cost.
- f. Method by which estimated total cost of project was determined.
- g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
- h. Estimated amount of borrowings and amount of such borrowings to be retired by qualified withdrawals from the Capital Construction Fund, including anticipated terms of such financing.
- i. Intended area of operation.
- j. Full details concerning the use of the proposed vessel; if the vessel is to be used for multiple purposes indicate the approximate percentage of time in which the vessel will be engaged in each service.

D. *Reconstruction of Barges, Containers and Trailers.* Provide in a form headed "SCHEDULE

B" (see prescribed format in appendix II) the proposed program for reconstruction of barges, containers and trailers, giving:

- a. Number, type and size of barges, containers and trailers.
- b. Nature and extent of proposed reconstruction work.
- c. Projected date of award of reconstruction contract.
- d. Projected date of completion of reconstruction work.
- e. Estimated total cost.
- f. Method by which estimated total cost of project was determined.
- g. Estimated amount of Capital Construction Fund monies to be used as down payment by the Applicant.
- h. Estimated amount of borrowings and amount of such borrowings to be retired by qualified withdrawal from the Capital Construction Fund including anticipated terms of such financing.
- i. Identification of vessels for which the barges, containers, and trailers will be part of the complement, and the vessel's area of operations. In the case of barges which are not a part of the complement of a vessel provide the barges' area of operation.
- j. Full details concerning the use of the proposed barge; if the barge is to be used for multiple purposes indicate approximate percentage of time in which the barge will be engaged in each service.

E. *Payment of Principal on Existing Indebtedness Incurred in Connection with the Acquisition, Construction or Reconstruction of a Qualified Vessel or a Barge, Container or Trailer which is Part of the Complement of a Qualified Vessel.* Provide in a form headed "Schedule B" (see prescribed format in appendix II) the proposed program for payments of principal on existing indebtedness incurred in connection with the acquisition, construction, or reconstruction of qualified vessels, barges, containers, or trailers, giving:

- a. Name, official number or other identifying information for the vessel, barge, container, or trailer.
- b. Whether the debt was incurred for acquisition, construction or reconstruction, demonstrating evidence of a direct connection between the qualified vessel and the debt which was incurred.
- c. The aggregate principal balance of such indebtedness as of the date of this application.
- d. The dates and amounts of payments of principal to liquidate the outstanding debt in accordance with the applicable loan agreements or other documents.

VI. *As to the Depository to be Used for the Capital Construction Fund.* Provide in a tabular form headed "Schedule C" (see prescribed format in appendix II) the full name and complete address of the financial institution which will act as depository. Indicate

the type of account, i.e., checking, savings, trust, in which the fund will be held.

VII. *Proposed Schedule of Minimum Amounts Available for Deposit into the Capital Construction Fund.* Provide in a tabular form headed "Schedule D" (see prescribed format in appendix II) a proposed program for deposits into the Capital Construction Fund commencing with the beginning of the first taxable year for which the Agreement applies. The applicant is advised that the purpose of Schedule D is to insure that a sufficient commitment has been made to accomplish the objectives contained in Schedule B. Minimum annual deposits are not required, but a minimum amount must be deposited for each 3 year period under the Agreement. For each such 3 year period of the proposed Schedule D the Applicant will indicate not only the minimum amount to be deposited, but also the source of such deposit, giving amounts expected to be derived from:

- a. Ordinary income attributable to the operation of agreement vessels.
- b. Net proceeds from the sale or other disposition of agreement vessels.
- c. Receipts from the investment or reinvestment of amounts held in the fund.
- d. Earned depreciation on agreement vessels.

VIII. *Financial Statements and Reports of the Applicant Including Predecessors.* A. *Financial Statements.* For each of the past three fiscal years provide:

1. Statements of Financial Conditions.
2. Statements of Operations.
3. Statements of Retained Earnings.

B. *Reports.* If the books of the Applicant were audited by an independent certified public accountant copies of the public accountant's reports shall be submitted for each of the past three fiscal years.

IX. *As to Exhibits Furnished.* At the time of original filing, the following exhibits, properly identified, shall be furnished:

Exhibit I—A copy of the Certificate of Incorporation of the Applicant or other organization papers including all amendments thereto presently in effect.

Exhibit II—A copy of the By-Laws or other governing instruments of the Applicant, including all amendments thereto presently in effect.

Exhibit III—Such other financial statements, copies of contracts, schedules and other required data which the Applicant desires to incorporate by reference.

X. A statement of any additional information which, in the opinion of the Applicant, is necessary to make the application and attached exhibits true and complete.

XI. A specific written request, pursuant to 5 U.S.C. 552(b)(4), must accompany the application if the Applicant wishes certain trade secrets, financial and commercial information contained in this application to be withheld from disclosure. The Maritime Adminis-

trator, Department of Transportation will endeavor to respect such a request, acting within the limits of the applicable provisions of the Freedom of Information Act.

State of _____ County of _____ ss.:

Dated _____, 19__

Name of Applicant _____

By _____ Name and Title

I, _____, do certify that I am the (Title of Office) of (Exact Name of Applicant), the Applicant on whose behalf I have executed the foregoing application; that the Applicant is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802); that this application is made for the purpose of inducing the United States of America to permit the Applicant, pursuant to section 607 of the Merchant Marine Act, 1936, as amended, the Joint Regulations and the SOC Regulations to establish a Capital Construction Fund for the purposes set forth in subsection 607(f) of the Act; that I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate, and true.

Subscribed and sworn to before me, a _____ in and for the State and County above named, this ____ day of _____, 19__.

My Commission expires _____.

NOTE: The United States Criminal Code makes it a criminal offense to knowingly and willfully falsify, conceal or cover up by any trick, scheme, or device, a material fact from, or make any false, fictitious or fraudulent statements or representations or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement to, any department or government agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001).

APPENDIX II TO PART 390—SAMPLE CAPITAL CONSTRUCTION FUND AGREEMENT

[Contract No. MA/CCF—]

CAPITAL CONSTRUCTION FUND AGREEMENT WITH

This Capital Construction Fund Agreement ("Agreement"), made on the date hereinafter set forth, by and between the United States of America, represented by the Maritime Administrator, Department of Transportation ("Maritime Administrator"), and _____, a corporation organized and existing under the laws of the State of _____ ("Party"), a citizen of the United States of America.

Whereas: 1. The Party has applied for the establishment of a Capital Construction

Fund ("Fund") under section 607 of the Merchant Marine Act, 1936, as amended ("Act");

2. The Party is the owner or lessee or has contracted for the construction of one or more eligible vessels as defined in section 607(k) of the Act, which vessels are listed in Schedule A hereof;

3. The Party has a program for the construction or acquisition of qualified agreement vessels as defined in section 607(k) of the Act, which program is described in Schedule B hereof;

4. The Maritime Administrator and the Party desire to enter into an Agreement for the purpose of providing replacement vessels, additional vessels, or reconstruction vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade;

5. The Maritime Administrator has determined that the Party qualifies for an Agreement under the Act; and

6. The Maritime Administrator has authorized the award of an Agreement upon the terms and conditions set forth herein subject to the Act, as it may be amended from time to time, and such rules and regulations as shall be prescribed by the Secretary of Transportation or his delegate, either alone or jointly with the Secretary of the Treasury, as necessary to carry out the powers, duties, and functions vested in them by the Act ("rules and regulations").

Now, therefore in consideration of the premises the Maritime Administrator and the Party hereby agree as follows:

1. *Establishment of a Fund:* (A) A Fund is hereby established for the purposes set forth in Article 2 hereof, pursuant to such terms and conditions as shall be prescribed in this Agreement, the Act, or the rules and regulations.

(B) The Fund shall be established in the depositories listed in Schedule C hereof.

2. *Purpose of the Fund:* The Fund established hereunder shall be utilized to provide for replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade, and to provide for qualified withdrawals to achieve the program set forth in Schedule B hereof.

3. *Term of the Agreement:* This Agreement shall be effective on the date of execution by the Maritime Administrator and shall continue until terminated under Article 4.

4. *Termination of Agreement:* (A) This Agreement may be terminated at any time under any of the following circumstances:

(1) Upon written mutual agreement by the parties;

(2) Upon written notice by the Party that a change has been made in the rules and reg-

ulations which would have a substantial effect upon the rights or obligations of the Party.

(B) This Agreement shall terminate upon completion of the program as set forth in Schedule B hereof.

(C) Upon termination of this Agreement pursuant to paragraphs (A) and/or (B) hereof all amounts remaining in the Fund shall be treated as if withdrawn in a nonqualified withdrawal (as that term is defined in the Act and the rules and regulations) on the date of termination of this Agreement.

5. *Deposits to be made into the Fund:* (A) Subject to any restrictions contained in the Act, the rules and regulations, or this Agreement, the Party may deposit, for each taxable year to which this Agreement applies, amounts representing:

(1) Taxable income attributable to the operation of the vessels listed in Schedule A or B hereof;

(2) The depreciation allowable under section 167 of the Internal Revenue Code of 1954, on the vessels listed in Schedule A or B hereof;

(3) The net proceeds from the sale or other disposition of any of the vessels listed in Schedule A or B hereof; and

(4) The net proceeds from insurance or indemnity attributable to the vessels listed in Schedule A or B hereof.

(B) The Party shall deposit for each taxable year to which this Agreement applies:

(1) All receipts from the investment or reinvestment of amounts held in the Fund, except that the Party shall not be permitted to deposit more than is necessary to complete its program set out in Schedule B hereof; and

(2) The net proceeds from the mortgage of any vessel listed in Schedule B hereof for which qualified withdrawals from the Fund have been made.

(C) Notwithstanding anything in paragraph (A) or (B) hereof to the contrary, the Party shall make the minimum deposits set forth in Schedule D hereof at the time and in such amounts as may be set forth therein. The Party specifically agrees to deposit up to one hundred percent of allowable taxable income attributable to the operation of agreement vessels in order to meet its obligations under this paragraph.

(D) In the event that any leased vessel listed in Schedule A hereof is included in another capital construction fund agreement, the maximum amount of depreciation which the Party may deposit in respect to that vessel shall be calculated by using the allowable percentage of the depreciation ceiling listed for that vessel in Schedule A hereof.

6. *Withdrawals from the Fund:* (A) The Party may make such qualified withdrawals (as that term is defined in the Act and the rules and regulations) as shall be necessary to fulfill the obligations set forth in Schedule B hereof. Any such qualified withdrawal may

be made without the consent of the Maritime Administrator, except as required by the rules and regulations.

(B) Any other withdrawal from the Fund shall be made only upon the prior written consent of the Maritime Administrator, as required by the rules and regulations.

7. *Investment of the Fund:* (A) The Party, at its discretion, may invest assets held in the Fund in accordance with the Act and the rules and regulations.

(B) The Party agrees that when investing assets held in the Fund to make such investments as will insure that sufficient cash is available at the time qualified withdrawals are required in accordance with the program described in Schedule B hereof.

8. *Pledges, Assignments and Transfers:* (A) The Party agrees not to assign, pledge or otherwise encumber, either directly or indirectly or through any reorganization, merger, or consolidation, all or any part of this Agreement, the Fund, or any assets in the Fund without the prior written consent of the Maritime Administrator; *Provided, however,* The Party may transfer the assets of the Fund, in whole or in part, to an investment trustee, as provided in the rules and regulations.

(B) The Party shall not obligate any assets in the Fund as a compensating balance.

(C) The Party may not sell, transfer or otherwise dispose of any vessel, or part thereof, described in Schedule B hereof without the prior written consent of the Maritime Administrator.

9. *Records and Reports:* (A) The Party and each affiliate, domestic agent, subsidiary or holding company connected with, or directly or indirectly controlling or controlled by the Party shall keep its books, records, and accounts relating to the maintenance, operation, servicing of the vessel(s) and/or service(s) covered by this Agreement in such form as may be prescribed by the Maritime Administrator under the rules and regulations.

(B) The Maritime Administrator agrees not to require the duplication of books, records and accounts required to be kept in some other form by the Interstate Commerce Commission or the Secretary of the Treasury, so long as the information required in paragraph (A) hereof is made available to the Maritime Administrator.

(C) The Party agrees to file, upon notice from the Maritime Administrator, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, charters, ships' logs, memoranda of facts and transactions, as in the opinion of the Maritime Administrator may affect the Party's performance under this Agreement.

(D) The Maritime Administrator may require by regulation that any of such statements, reports and memoranda shall be cer-

tified by independent certified public accountants acceptable to the Maritime Administrator.

(E) The Maritime Administrator may require the Party to establish and maintain systems of control of expenses and revenues in connection with the operation of the agreement vessel(s).

(F) The Party agrees to submit promptly to the Maritime Administrator any contract executed in connection with the program described in Schedule B hereof.

(G) The Maritime Administrator is hereby authorized to examine and audit the books, records, and accounts of all persons referred to in this Article whenever he may deem it necessary or desirable.

10. *Modification and Amendment:* This Agreement may be modified or amended at any time by mutual written consent.

11. *Incorporation of Schedules:* The attached Schedules A, B, C, and D are incorporated into and made a part of this Agreement.

12. *Liquidated Damages:* (A) In the event that the Party operates any qualified agreement vessel described in Schedule B hereof in geographic trades other than those permitted by section 607 of the Act, this Agreement, and/or the rules and regulations, the Party shall pay to the United States an amount of liquidated damages for each day of such impermissible geographic trading which shall constitute the time value of the deferral of Federal income tax which the Party has received. The amount shall be calculated in accordance with the rules and regulations.

(B) The Party agrees to pay the daily rate of liquidated damages to the Maritime Administrator, for deposit in the Treasury of the United States, within the time limits provided for in the rules and regulations.

(C) Nothing in this Article shall in any way be construed to diminish or waive any of the Maritime Administrator's other remedies for breach under the Act, the Agreement, or the rules and regulations.

(D) Notwithstanding the fact that the Agreement may be terminated pursuant to the provisions of Article 4 hereof, or otherwise, the provisions of this Article 12 shall continue in effect as follows:

(1) In the case of a vessel constructed or acquired within one year of final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of twenty (20) years from the date of such vessel's final delivery;

(2) In the case of a vessel reconstructed or acquired more than one year after final delivery from the shipyard after construction with the aid of qualified withdrawals, for a period of ten (10) years from the date of such vessel's final delivery from the shipyard after reconstruction or the date of such vessel's acquisition; and

(3) In the case of a vessel included in Schedule B hereof as a qualified agreement vessel in regard to which qualified withdrawals from the Fund have been made to pay existing indebtedness, for a period of ten (10) years from the date of the first qualified withdrawal in regard to such vessel, *Provided, however*, That if such vessel was more than fifteen (15) years old on the date of the first qualified withdrawal in regard thereto, such conditions shall continue for a period of five (5) years in regard to such vessel.

13. *Warranties and Representations by the Party*: The Party hereby warrants and represents that:

(A) The Party is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended, and will continue to be so for the term of this Agreement. The Party agrees that, each year, within thirty (30) days after the annual meeting of its stockholders, it shall file a supplemental affidavit as evidence of its continuing United States citizenship, provided that any changes in data last furnished with respect to officers, directors, and stockholders holding five percent or more of the issued and outstanding stock of each class or series which would result in a loss of the Party's status as a United States citizen shall be promptly reported to the Maritime Administrator.

(B) The Party owns, is the lessee, or has contracted for the construction of one or more eligible vessels (within the meaning of section 607(k) of the Act) as listed in Schedule A hereof.

(C) The qualified vessels described in Schedule B hereof: (1) Were or will be constructed or reconstructed in the United States, except as provided in the Act and the rules and regulations;

(2) Are or will be documented under the laws of the United States and will continue to remain so documented; and

(3) Will be operated in the foreign, Great Lakes or noncontiguous domestic trade of the United States within the meaning of the Act and the rules and regulations

(D) The Party will meet its deposit obligations as agreed upon in Article 5 of this Agreement.

(E) The Party will promptly inform the Maritime Administrator, in writing, of any change in circumstances which would tend to adversely affect the ability of the Party to carry out its obligations under the Agreement.

(F) The Party will faithfully conform to all rules and regulations governing the Agreement and the Fund.

(G) Nothing of monetary value has been improperly given, promised, or implied for entering into this Agreement. The Party further warrants that no improper personal, political or other activities have been used or attempted in an effort to influence the out-

come of the discussions or negotiations leading to the award of this Agreement. Breach of this warranty shall constitute an event of default for which the Maritime Administrator shall have the right, notwithstanding Article 4, to terminate this Agreement without liability to the United States.

14. *Default in Obligations*: (A) If the Maritime Administrator determines that any substantial obligation under this Agreement is not being fulfilled by the Party, he may, under the rules and regulations and after the Party has been given notice and an opportunity to be heard, declare a breach and treat the entire Fund, or any portion thereof, as an amount withdrawn in a non-qualified withdrawal.

(B) The Maritime Administrator shall provide an opportunity for the Party to cure a breach declared pursuant to Paragraph (A) of this Article 14.

(C) Events of breach by the Party shall include, but shall not be limited to: (1) Failure in any respect to use due diligence in performing the program set forth in Schedule B hereof;

(2) Obligorating the assets in the Fund as a compensating balance;

(3) Failure to make deposits required in Schedule D hereof;

(4) Failure to secure written permission from the Maritime Administrator when such permission is required by the rules and regulations;

(5) Failure to submit reports and/or records on a timely basis as provided in Article 9 hereof;

(6) Any material misrepresentation made by the Party or any failure by the Party to disclose material information in connection with this Agreement whether before or after execution hereof and whether made in an application, report, affidavit, or otherwise; or

(7) Failure by the Party to comply with any provisions of section 607 of the Act, the rules and regulations, or this Agreement.

15. *Extension of Federal Income Tax Benefits*: The Maritime Administrator agrees that the Federal income tax benefits provided in the Act and the rules and regulations shall be available to the Party if the Party shall carry out its obligations under this Agreement.

UNITED STATES OF AMERICA, MARITIME ADMINISTRATOR, DEPARTMENT OF TRANSPORTATION

(SEAL)

Attest:

By _____

(Secretary)

(SEAL)

By _____

(Secretary)

Attest:

Maritime Administration, DOT

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By _____ (Contracting Officer) Approved as to form: (Date of Execution)
 _____ (Secretary) By _____ (Assistant General Counsel, Maritime Administration) (President)

XYZ Co.—SCHEDULE A—ELIGIBLE AGREEMENT VESSELS

(a)	(b)	(c)	(d)	(e)
Name of vessel	Specific type	Capacity	Owned or leased and owner is leased	Date and place constructed
SS <i>Smith</i> , official No. 236425..	Tanker	56,000 dwt	Leased: ABC Ships, Inc., San Diego, Calif., 50 percent of depreciation ceiling.	1962, American Steel, San Francisco, Calif.
SS <i>Brown</i> , official No. 325111.	.....do	265,000 dwt	Owned	1974, Southern Shipyards, Mobile, Ala.
SS <i>Jones</i> , official No. 190528..	Container ship	30,000 dwt, 500 400-ft containers.	.....do	1954, Bond Shipyard, New York, N.Y.
<i>Hercules</i> , official No. 256,125.	Oceangoing tugboat	105 ft 2,000 hp .....	.....do	1968, Washington Iron Works, Seattle, Wash.
XYZ-1, official No. 257,164.	Roll-on, roll-off barge ...	1,200 gr ton, 45 40-ft containers.	.....do	1968, Washington Iron Works, Seattle, Wash.
XYZ-2, official No. 260,138.	.....do .....	.....do .....	.....do	1969, Washington Iron Works, Seattle, Wash.
OTC-35, official No. 262,170.	.....do	1,500 gr ton, 60 40-ft containers.	Leased; Oregon Towing Co., Portland, Ore., 100 percent of depreciation ceiling.	1969, J. & J. Shipyard, Portland, Ore.
200 trailers, Nos. 111032-A-10677B-1M through 11032-A-10877B-1M.	Dry cargo	40 ft	Leased; International Leasing Co., New York, N.Y. 0 percent of depreciation ceiling.	1968, Acme Container Corp., New York, N.Y.
1,500 containers, Nos. 312 A through 1312 A..	Refrigerated dry cargo.	.....do	Owned	1969, Aluminum Products, Inc., Dallas, Tex.

XYZ Co.—SCHEDULE A—ELIGIBLE AGREEMENT VESSELS (CONTINUED)

	(f)	(g)	(h)	(i)
	Date and place reconstructed	Date documented	Area of operation	Details of service
SS <i>Smith</i> , official No. 236425.	Not available	1962	Noncontiguous domestic trade.	Carriage of crude oil from Valdez, Alaska, to west coast of the continental United States.
SS <i>Brown</i> , official No. 325111.	.....do	1974	U.S. foreign trade	Worldwide carriage of crude oil.
SS <i>Jones</i> , official No. 190528.	1970, Litton Systems, Mississippi.	1954	U.S. foreign and non-contiguous trade.	Container service between Japan and California via Hawaii.
<i>Hercules</i> , official No. 256,125.	Not available	1968	Domestic	Towing roll-on, roll-off barges from Puget Sound to San Francisco.
XYZ-1, official No. 257,164.	.....do	1968	.....do	Carriage of trailer type containers between Puget Sound and San Francisco.
XYZ-2, official No. 260,138.	.....do	1969	.....do	Do.
OTC-35, official No. 262,170.	.....do	1969	.....do	Do.
200 trailers, Nos. 111032-A-10677B-1M through 11032-A-10877B-1M.	.....do	NA	.....do	For use on Barges XYZ-1, XYZ-2, and OTC-35.
1,500 containers, Nos. 312 A through 1312 A..	.....do	NA	U.S. foreign non-contiguous domestic trade.	For use as complement of SS <i>Jones</i> .

XYZ Co., PROGRAM OBJECTIVES—I. ACQUISITION OR CONSTRUCTION OF VESSELS

Vessel name, and official number	General characteristics	Approximate cost	Amount to be withdrawn from fund	Approximate date of—		Anticipated area of operation
				Contract	Delivery	

XYZ Co., PROGRAM OBJECTIVES—II. RECONSTRUCTION OF VESSELS

Vessel name, and official number	General characteristics	Approximate cost	Amount to be withdrawn from fund	Approximate date of—		Anticipated area of operation
				Contract	Delivery	

XYZ Co., PROGRAM OBJECTIVES—III. PAYMENT OF PRINCIPAL ON EXISTING INDEBTEDNESS

Vessel name and official number	Purpose of indebtedness	Amount to be paid from fund
---------------------------------	-------------------------	-----------------------------

XYZ Co., SCHEDULE C—DEPOSITORIES FOR CAPITAL CONSTRUCTION FUND

Name	Address
1. First American Bank checking account	2001 Park Ave., San Francisco, Calif. 94109.
2. Southern California National Bank investment trustee established pursuant to sec. 390.7 of the SOC regulations.	1 Waterfront Place, San Francisco, Calif. 94101.

XYZ Co. SCHEDULE D—MINIMUM DEPOSITS

[In thousands]

Taxable year	Ordinary income	Net proceeds	Fund interest	Depreciation	Total
1973 to 1975	\$3,150	¹ \$2,400	\$250	.....	\$5,800
1976 to 1978	2,900	² 1,500	325	.....	4,725
1979 to 1981	3,000	.....	350	85	3,435
1982 to 1984	2,800	.....	74	125	3,000
1985 to 1987	2,850	.....	90	60	3,000
1988 to 1990	2,900	.....	100	.....	3,000
1991 to 1993	3,000	.....	100	.....	3,100
1994 to 1996	3,100	.....	110	.....	3,210
1997 to 1999	3,250	.....	120	.....	3,370
2000	3,200	.....	120	.....	3,320
Total .....	.....	.....	.....	.....	35,960

¹ Net proceeds from sale of barges XYZ-1 and XYZ-2 for \$1,200,000 each.² Net proceeds from sale of tug *Hercules*.

[41 FR 4265, Jan. 29, 1976, as amended at 42 FR 43632, Aug. 30, 1977]

APPENDIX III TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—SAMPLE SEMIANNUAL REPORT

[Illustrative sample of the report required by the Maritime Administration pursuant to 46 CFR part 390 prescribing the capital construction fund reporting requirements to be followed by those companies which are party to a capital construction fund agreement]

EXHIBIT A—XYZ Co., SUMMARY OF CASH, SECURITIES, AND STOCK ON DEPOSIT AND NET ACCRUED DEPOSITS TO AND ACCRUED WITHDRAWALS FROM THE CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19—

	Thousands
Cash (exhibit A-1 and B)	\$1,025
Securities and stock—adjusted basis (exhibit A-2 and B)	2,560
Fund total for tax purposes on deposit (exhibit C)	3,585

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EXHIBIT A—XYZ Co., SUMMARY OF CASH, SECURITIES, AND STOCK ON DEPOSIT AND NET ACCRUED DEPOSITS TO AND ACCRUED WITHDRAWALS FROM THE CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19—Continued

	Thousands
Net accrued deposits and withdrawals (exhibit A-3)	450
Fund total (agrees with balance sheet submitted at this date) on deposit for book purposes—June 30, 19—	4,035
Portion of fund total for tax purposes as of June 30, 19—, which represents a "CCF: Security amount" pursuant to an agreement covering the dual use of a capital construction fund	Thousands
Balance brought forward	\$403
Deposits	82

EXHIBIT A—XYZ Co., SUMMARY OF CASH, SECURITIES, AND STOCK ON DEPOSIT AND NET ACCRUED DEPOSITS TO AND ACCRUED WITHDRAWALS FROM THE CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19—Continued

	Thousands
Total "CCF: Security Amount"	485
EXHIBIT A-1—XYZ COMPANY	
SUMMARY OF CASH ON DEPOSIT IN CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19—	
	Thousands
First American Bank, San Francisco, Calif., checking account No. 654-0876-211	\$1,025
Total cash in capital construction fund at June 30, 19—	1,025

EXHIBIT A-2—XYZ Co., SUMMARY OF SECURITIES AND STOCK (ADJUSTED BASIS AND FAIR MARKET VALUE) IN CAPITAL CONSTRUCTION FUND AS OF JUNE 30, 19—(IN THOUSANDS)

	Adjusted basis	Fair market value
Treasury notes—due July 4, 19—, \$800,000 face value, 1st American Bank, San Francisco, Calif., trust account No. 610-2135	\$760	\$760
Negotiable certificate of deposit—due July 31, 19—, \$500,000 at 8 percent, 1st American Bank, San Francisco, Calif., CD No. 186007	500	500
U.S.A. Motors, Inc.—class A common stock, 5,000 shares, Southern California National Bank, trust account No. 358-21	625	725
Energy Co., Inc.—1st preferred, 4,100 shares, Southern California National Bank, trust account No. 358-21	205	255
Boon Corp.—class A common stock, 10,000 shares, Southern California National Bank, San Francisco, Calif., trust account No. 358-21	470	520
Total securities and stock in capital construction fund at June 30, 19—	2,560	2,760

EXHIBIT A-3—XYZ Co., SUMMARY OF NET ACCRUED DEPOSITS AND WITHDRAWALS IN CAPITAL CONSTRUCTION FUND AS OF JUNE 19—

	Thousands
Accrued deposits:	
19— income (6 mos. ended June 30, 19—)	\$500
Depreciation	200
Total	700
Accrued withdrawals: Progress payment made from general fund—hull 210	250
Net accrued deposits and withdrawals in capital construction fund at June 30, 19—	450

EXHIBIT B—XYZ Co., TRANSCRIPT OF TRANSACTIONS IN THE CAPITAL CONSTRUCTION FUND FOR THE 6 MOS. ENDED JUNE 30, 19—

Date	Description of transaction	Cash		Securities and stock (at adjusted basis)		Detail
		Debit	Credit	Debit	Credit	
Jan. 1, 19—	Balances brought forward	\$1,500,000	.....	\$2,000,000	.....
Jan. 1, 19—	Bond debt payment—SS <i>Smith</i>		\$250,000	.....	.....
Jan. 3, 19—	Deposit 19— depreciation	300,000	.....	.....	.....
Jan. 4, 19—	Purchased Treasury notes—90 days at 6-percent discount		752,000	752,000	.....	\$800,000 at 6-percent discount.
Feb. 29, 19—	Dividends earned	4,500	.....	.....	.....	\$0.45 per share on 10,000 shares Boon Corp.
Mar. 15, 19—	Progress payment No. 3 hull 210 .....	.....	172,500	.....	.....

**EXHIBIT B—XYZ Co., TRANSCRIPT OF TRANSACTIONS IN THE CAPITAL CONSTRUCTION FUND FOR
THE 6 MOS. ENDED JUNE 30, 19—Continued**

Date	Description of transaction	Cash		Securities and stock (at adjusted basis)		Detail
		Debit	Credit	Debit	Credit	
Apr. 4, 19—	Sale of Treasury notes—cost	752,000	.....	.....	752,000	
	Income from sale	48,000	.....	.....	.....
Apr. 4, 19—	Purchased Treasury notes 90 days at 5-percent discount .....	.....	760,000	760,000	.....	\$800,000 at 5-percent discount.
Apr. 15, 19—	Deposit from 19— earnings	310,000	.....	.....	.....
May 15, 19—	Progress payment No. 4—hull 210..	.....	180,000	.....	.....
June 15, 19—	Sale of stock—cost	200,000	.....	.....	200,000	4,000 shares at \$56.25 per share. Energy Co., Inc.
	Gain on sale of stock .....	.....	25,000	.....	.....
	Balances carried forward	1,025,000	.....	2,560,000	.....

**EXHIBIT C—XYZ Co., SUMMARY OF TOTAL TRANSACTION AFFECTING THE TAX ACCOUNT BALANCES
IN THE CAPITAL CONSTRUCTION FUND FOR THE 6 MOS. ENDED JUNE 30, 19—**

	Ordinary income	Capital gain	Capital	Total
Opening balance, Jan. 1, 19—	\$1,000,000	\$1,000,000	\$1,500,000	\$3,500,000
Deposits, income, transfers in, etc	362,500	25,000	300,000	687,500
Total	1,362,500	1,025,000	1,800,000	4,187,500
Withdrawals, losses, transfers out, etc .....	.....	.....	602,500	.....
Balance at June 30, 19—	1,362,500	1,025,000	1,197,500	3,585,000

EXHIBIT D—XYZ COMPANY

SUMMARY BY VESSEL OF QUALIFIED WITHDRAWALS FROM THE FUND FOR THE SIX MONTHS ENDING JUNE 30, 19—

A. Acquisition or Construction of Vessels

(1) 80,000 dwt tanker: No qualified withdrawals have been made to date; construction is presently scheduled to commence in mid-1977.

(2) 130-foot ocean tug hull No. 210:

Balance brought forward	\$700,000
Qualified withdrawals during period	352,500

Total qualified withdrawals to date 1,052,500

130-foot ocean tug hull No. 211: No withdrawals have been made to date; construction is presently scheduled to commence in November 1975

B. Acquisition or Construction of Barges, Containers and Trailers

250-foot tank barge: No qualified withdrawals have been made to date; construction presently scheduled to commence in November 1975.

C. Reconstruction of Vessels

None.

D. Reconstruction of Barges, Containers, and Trailers

None.

E. Payment of Principal on Existing Indebtedness

SS *Smith*—Official No. 236425:

Balance brought forward	\$500,000
Qualified withdrawals during period	250,000

Total qualified withdrawals to date 750,000

APPENDIX IV TO PART 390—SAMPLE ADDENDUM TO MARITIME ADMINISTRATION CAPITAL CONSTRUCTION FUND AGREEMENT

This Agreement, made by the Maritime Administrator, Department of Transportation ("Maritime Administrator") and _____ ("Party"), a citizen of the United States of America, as an Addendum to that certain agreement, Contract No. MA/CCF—

Whereas: 1. On _____, the parties hereto entered into a Capital Construction Fund Agreement ("Agreement") under section 607 of the Merchant Marine Act, 1936, as amended ("Act");

2. The parties hereto desire to modify that Agreement in the manner hereinafter set forth;

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3. The parties hereto have agreed to said amendment and desire to incorporate the same into the Agreement.

Now, therefore, in consideration of the premises the Maritime Administrator and the Party agree as follows:

Notwithstanding the provisions of Article 4(A)(2) of the Agreement, the Party may, within sixty (60) days after notice appears in the FEDERAL REGISTER that the Regulations jointly prescribed by the Secretary of the Treasury and the Secretary of Transportation have been finalized, terminate the Agreement, if such Regulations have a substantial effect on the rights or obligations of the Party. Upon termination of the Agreement pursuant to this Addendum No. _____ the provisions of the Internal Revenue Code of 1954, the Act, and the rules and regulations shall apply to all funds remaining in the Fund as if such funds were withdrawn in a non-qualified, withdrawal, as that term is defined in the Act and the rules and regulations.

In witness whereof, the Secretary and the Party have executed this addendum, in quadruplicate, effective as of the date indicated below.

UNITED STATES OF AMERICA,
*Secretary of Transportation,
Maritime Administrator,*

Department of Transportation

By	By.....
(Contracting Officer)	
Date	Title.....
Attest:	Attest:
By	By.....
(Secretary)	
.....	Title.....
(SEAL)	(SEAL)

Approved as to form:

.....
(Assistant General Counsel
Maritime Administration)

[G.O. 109, Rev., Amdt. 6, 42 FR 43634, Aug. 30, 1977]

APPENDIX V TO PART 390—SAMPLE
QUALIFIED TRADE AFFIDAVIT

AFFIDAVIT

State of _____
County of _____
I, _____, (Name) being duly sworn, depose and say:

1. That I am the _____ (Title) of _____.
(Name of party)

2. That I am fully acquainted with and have knowledge of the operations of all qualified agreement vessels owned or operated by my company and identified in Capital Construction Fund Agreement, MA/CCF _____.

3. That I have full knowledge of the trading restrictions and liquidated damages provisions pertaining to qualified agreement

vessels, as stipulated in section 607 of the Merchant Marine Act, 1936, as amended, and in the rules and regulations of 46 CFR Part 390.

4. That based on my inspection of Company records and to the best of my knowledge and belief, except as noted below in statement 5 of this affidavit, during the period _____ (Beginning of taxable year) through _____ (End of taxable year) my company operated its qualified agreement vessels only in the United States, foreign, Great Lakes, and noncontiguous domestic trade in accordance with Capital Construction Fund Agreement, MA/CCF _____.

5. Exceptions to statement 4 of this Affidavit are as follows (indicate exceptions below or attach a supplemental statement if additional space is needed; if there are no exceptions, write "none"):

(Affiant)

Subscribed and sworn to before me, a Notary Public in and for the State, City and County above named, this ____ day of _____, 19__.

(Notary Public)

My commission expires _____, 19__

[41 FR 39751, Sept. 16, 1976]

PART 391—FEDERAL INCOME TAX
ASPECTS OF THE CAPITAL CON-
STRUCTION FUND

Sec.

391.0 Statutory provisions; section 607, Merchant Marine Act, 1936, as amended.

391.1 Scope of section 607 of the Act and the regulations in this part.

391.2 Ceiling on deposits.

391.3 Nontaxability of deposits.

391.4 Establishment of accounts.

391.5 Qualified withdrawals.

391.6 Tax treatment of qualified withdrawals.

391.7 Tax treatment of nonqualified withdrawals.

391.8 Certain corporate reorganizations and changes in partnerships, and certain transfers on death. [Reserved]

391.9 Consolidated returns. [Reserved]

391.10 Transitional rules for existing funds.

391.11 Definitions.

AUTHORITY: Secs. 204(b) and 607(l), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114, 1177), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036), Dept. of Commerce Organization Order 10-8 (38 FR 19707), July 23, 1973.